IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3440 OF 2004.

Govind Rajarm Lele. .... Petitioner.

versu.

M/s.Joshi Home-Makers
and others. .... Respondents.

Shri Uday Warunjikar for the Petitioner.

Shri B.G.Vaidya i/by M/s.Beri & Co. for the Respondent No.1.

Shri S.M.Gorwadkar, A.G.P. for Respondents Nos.2 to 4.

CORAM : ABHAY S.OKA, J.

DATED : 8th December, 2004.

P.C.:

1. Heard the learned appearing for the parties. By order dated 5th July 2004, this Court directed that the Writ Petition would be decided finally at admission stage.

2. Before considering the submissions made by the learned Counsel for the parties, it will be necessary to refer to the facts of the case. The Petitioner made an application before the Deputy Registrar of Cooperative Societies, Pune City (IV) seeking permission for reservation of the name of the proposed Cooperative Society and for permission for opening a Bank Account in the name of the proposed Cooperative Society. The Petitioner claims to be the Chief Promoter of the

proposed Cooperative Society. The said application was opposed by the Respondent No.1. By order dated 21st March 2002, the said Application came to be rejected. Being aggrieved by the said order, the Petitioner preferred an Appeal before the Divisional Joint Registrar. By order dated 22nd August 2003, the said Appeal was partly allowed by setting aside the order dated 21st March 2003. A direction was issued for remand of the Application made by the Petitioner to the Deputy Registrar. The said order came to be challenged by the Petitioner by filing a Revision Application. By the impugned Judgment and Order dated 11th February 2004 the Revisional Authority has set aside the order passed by the Appellate Authority and confirmed the order passed by the Deputy Registrar by which the Application of the Petitioner was rejected.

3. Shri Warunjikar the learned Counsel appearing for the Petitioner submitted that the order of remand passed by the Appellate Authority was not challenged by the Respondent No.1 and therefore, the Revisional Authority could not have quashed and set aside the said order of remand while hearing the Revision preferred by the Petitioner. He submitted that if the Revisional Authority was not satisfied about the merits of the case of the Petitioner at the highest the Revision would have been dismissed and the order of remand ought to have been confirmed. He further submitted that in fact the order

of remand passed by the Appellate Authority was uncalled for as all the relevant documents were before the Appellate Authority. He submitted that on merits, the Revision Application should have been allowed by setting aside both the orders and the Application made by the Petitioner before the Deputy Registrar ought to have been allowed. He submitted that instead of remanding the matter, the Appellate Authority should have applied its mind to the documents and decided the Appeal on merits.

4. Shri Vaidya, the learned Counsel appearing for the Respondent No.1 submitted that the Revisional Authority can exercise suo-motu powers under section 154 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the said Act of 1960") and therefore, the Revisional Authority was justified in restoring the order of the Deputy Registrar. He submitted that the Respondent No.1 has already executed a registered deed of declaration, which is considered by the Revisional Authority. He submitted that after the deed of declaration is executed by the Respondent No.1, there was no question of incorporating a housing society. He, therefore, submitted that the order passed by the Revisional Authority is just and proper. The learned A.G.P. appearing for the Respondents Nos.2 and 3 supported the order passed by the Revisional Authority.

5. I have considered the rival submissions. A perusal

of the order passed by the Appellate Authority shows that the first authority i.e. the Deputy Registrar did not have benefit of considering all the relevant documents. With a view to allow the first authority to consider all the relevant documents, the order of remand was passed by the Appellate Authority. The Respondent No.1 did not choose to challenge the said order of remand obviously because the Respondent No.1 was not aggrieved by the said order. The contention of the Petitioner before the Revisional Authority was that the first Appellate Authority instead of remanding the matter ought to have considered the case of the Petitioner on merits and should have allowed the application made by the Petitioner.

6. The Appellate Authority has referred to the merits of the controversy before him. However, after considering the merits of the case, the Appellate Authority found that it was a fit case for remanding the matter to the Respondent No.3 as the Respondent No.3 has not given any reasons for rejecting the Application made by the Petitioner. There is a reference in the order of the Appellate Authority to the fact that the deed of agreement dated 18th October 2001 was not produced before the first authority.

7. It is possible to argue that the Revisional Authority could have exercised suo-motu power of revision though no

Revision Application was preferred by the Respondent No.1. However, it is not in dispute that such power was not exercised by the Revisional Authority. Even assuming that such power was to be exercised, it was the duty of the Revisional Authority to give notice to the Petitioner that such power was proposed to be exercised by the Revisional Authority.

8. If the order of remand by which order of the Deputy Registrar was set aside was not challenged by the Respondent No.1, there was no occasion for the Revisional Authority to set aside the said order and restore the order of the Deputy Registrar. If the Revisional Authority was not satisfied with the Revision Application made on behalf of the Petitioner, at the highest, the Revision Application could have been dismissed. There was no occasion to restore the order of the Deputy Registrar. However, the Revisional Authority has considered the documents on record and has come to the conclusion on merits that the Application filed by the Petitioner was not tenable. In my view the finding of the Appellate Authority that proper reasons are not assigned by the Deputy Registrar while rejecting the application of the Petitioner appears to be correct. The Appellate Authority has specifically recorded a finding that one of the documents was not produced before the first authority. Therefore, in my view, the order of remand passed by the Appellate Authority was fully

justified and when the first authority had not given proper reasons and has not considered all the documents, it was not proper on the part of the Revisional Authority to have considered the documents and decided the original Application made by the Petitioner on merits.

9. In view of this state of affairs, no purpose will be served by remanding the matter to the Revisional Authority and it will be in the interest of both the parties if the matter is heard afresh by the Deputy Registrar.

10. Hence I pass the following order:

(a) The impugned Judgment and Order dated 11th February 2004 is quashed and set aside. The Revision Application preferred by the Petitioner stands dismissed.

(b) The order dated 22nd August 2003 passed by the Appellate Authority is restored.

(c) The Petitioner and Respondent No.1 are directed to appear before the Deputy Registrar of Cooperative Societies, Pune City (IV), Pune, on 22nd December 2004 for fixing the schedule of hearing. The Deputy Registrar will decide the matter within a period of three months from 22nd December 2004.

(d) All contentions of merits are kept open.

(e) Parties and the concerned authorities to act on authenticated copy of this order.

Judge.